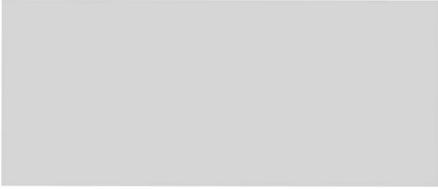




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 23 2015

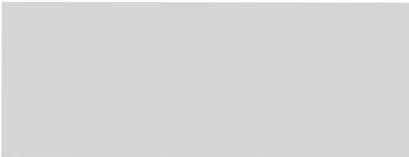
FILE#: [REDACTED]

PETITION RECEIPT#: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and the matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner entered into the marriage in good faith, and that she resided with her spouse. On appeal, the petitioner submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part, that:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner is a citizen of Trinidad and Tobago who entered the United States as a B-2 nonimmigrant on March 5, 1999. The petitioner married C-Y-¹, a U.S. citizen, on [REDACTED] 2007. She filed the instant Form I-360 self-petition on May 1, 2012. On June 13, 2013, the director sent a Request for Evidence (RFE) to which the petitioner timely responded. On December 16, 2013, the director denied the petition on the basis that the petitioner failed to establish good-faith entry into her marriage with C-Y-. The director found further that the petitioner failed to establish that she resided with C-Y-. The petitioner asserts on appeal that the cumulative record establishes, by a preponderance of the evidence, that she entered into her marriage with C-Y- in good faith and that she resided with C-Y- during their marriage.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect individual's identity.

Good Faith Marriage

The petitioner stated generally in an affidavit that, although she lived in New Jersey, she met C-Y- in a hotel lobby in California on the last day of a church convention that she attended in July 2005. She indicated that she and C-Y- exchanged phone numbers in order to keep in touch, and that they talked on the phone every day after that. She generally recounted that she and C-Y- got along, had many things in common, and that she visited C-Y- in [REDACTED] one Labor Day weekend and fell in love with him. The petitioner recounted further that about two or three months later C-Y- asked her to move in with him, but she declined due to her belief that the two must marry before living together. The petitioner indicated that their "relationship progressed by email and phone" after that, and in January 2007 they decided to get married. The petitioner stated further that she moved to [REDACTED] the first week in March to prepare for her wedding, she and C-Y- married in a chapel in downtown [REDACTED] on [REDACTED] 2007, and things were ideal until June 2007 when the relationship began to deteriorate. The petitioner's statement lacks specific information regarding the couple's courtship, wedding, and shared residence and experiences to establish good-faith intent.

Letters from the petitioner's friends, [REDACTED] and [REDACTED], also lack probative information regarding the petitioner's marital intent. The letters reflect that the petitioner's friends did not live in California and did not meet C-Y- personally, and the letters lack detailed information regarding the petitioner's relationship with C-Y-. The friends fail to describe interactions with the petitioner and C-Y- to demonstrate her good-faith marriage. The record contains additional letters from the petitioner's friends, [REDACTED] and [REDACTED] submitted in response to the RFE. These friends also lived outside of California, did not meet C-Y- personally, and failed to describe any visit or social occasion with the petitioner and C-Y-. Furthermore, although three of the petitioner's friends ([REDACTED]) indicate that they spoke to C-Y- on the phone, they provide no probative details or examples of interactions that would establish the good-faith relationship between the petitioner and C-Y-. Wedding photographs contained in the record also fail to establish the petitioner's marital intentions, as the legal existence of the marriage does not establish that the union was entered into in good faith. Furthermore, letters that C-Y- sent to the petitioner in New Jersey while he was in jail are dated after the two separated, and provide no probative information or insight into the petitioner's marital intentions when she married C-Y-. Overall, the record fails to establish, by a preponderance of the evidence, the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The evidence in the record also fails to establish the petitioner's joint residence with C-Y-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The petitioner indicated in her affidavit that she lived in New Jersey prior to [REDACTED] 2007, when she and C-Y- married, and that she lived with C-Y- in [REDACTED] from [REDACTED] 2007 until 2009. A Psychoemotional and Marital Dynamics Assessment contained in the record also reflects that the petitioner recounted that she lived with C-Y- from [REDACTED] 2007 until December 2009. The petitioner stated on her Form I-360, however, that she and C-Y- resided together from [REDACTED] 2007 to [REDACTED] 2007. Moreover, the petitioner indicated on her Biographic Information, Form G-325A signed on April 7, 2007, that she began living in [REDACTED] California in November 2006.

In addition to the discrepancies regarding the claimed dates of residence, the petitioner claimed two different [REDACTED] addresses which overlap during the relevant time period. First, the petitioner's application for marriage license indicates that she and C-Y- were residing at [REDACTED] in [REDACTED] in [REDACTED] 2007. The Form G-325A signed by the petitioner on April 7, 2007, however, indicates that she lived in [REDACTED] at [REDACTED] at that time. Although the director's RFE asked the petitioner to resolve the discrepancies in the record regarding the claimed residences, the petitioner failed to address the issue or resolve the discrepancies. Instead, in her RFE response and in her appeal brief the petitioner generally asserted that she lived with C-Y- between August 2007 and December 2009.

Notwithstanding the inconsistencies, the evidence lacks probative details regarding the petitioner's joint residence with C-Y-. The petitioner provided no response to the Form I-360 question asking for the last address at which she lived with her spouse. Further, the statements submitted by the petitioner and on her behalf failed to describe the petitioner's and C-Y-'s joint residences and shared residential routines in any detail. Upon review, the record does not establish, by a preponderance of the evidence, that the petitioner resided with C-Y- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.